

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition for approval of tariffs	:	No. 06-0411
Implementing ComEd's proposed	:	
residential rate stabilization program	:	

SUPPLEMENTAL MOTION TO DISMISS

The People of the State of Illinois (“the People”), by and through the Illinois Attorney General, Lisa Madigan, file this Supplemental Motion to Dismiss Commonwealth Edison Company’s (“ComEd”) petition to establish a “residential rate stabilization program” because the proposed program is not authorized by law.¹ In support of this motion, the People state as follows:

ComEd asks the Commission to approve an illegal plan

1. On May 23, 2006, Commonwealth Edison (“ComEd”) filed a petition with the Illinois Commerce Commission (“ICC” or “Commission”) that “seeks approval of tariffs implementing ComEd’s residential rate stabilization program (the “RRS program”) including proposed Rider RRS

¹ The People have also filed a motion to dismiss an Ameren petition proposing a cap and deferral plan in ICC Docket No. 06-0448. The Ameren Companies concede that “a cap and deferral plan appears to be contrary to Illinois law” and that “there is no question that legislation is required to enable securitization.” *Ameren Petition*, ICC Docket No. 06-0411 (June 14, 2006), at 3 and 8.

. . . .” Petition of Commonwealth Edison Company to Establish a Residential Rate Stabilization Program, ¶1.

2. ComEd filed direct testimony in support of its Residential Rate Stabilization Program, seeking approval of its plan to cap rates at 8%, 7% and 6% for the first three years of the phase-in period, and then to recover its deferred cost after the phase-in period ends. ComEd asks the Commission to approve its capitalization of the deferred costs by the creation of a regulatory asset in an amount equal to the deferred charges plus carrying costs.

3. On June 20, 2006, the People filed a motion seeking dismissal of ComEd’s petition because it fails to comply with Section 9-201 of the Public Utilities Act (“PUA”), 220 ILCS 5/9-201 and because ComEd failed to comply with the standard information requirements in 83 Ill. Admin. Code § 285. That motion is pending.

4. On August 1 and 2, 2006, ComEd submitted rebuttal testimony describing a revised proposal which would allow residential customers to choose whether to participate in the “rate stabilization program” and which would cap rate increases at 10% per year in 2007 – 2009.

4. Both proposals -- the mandatory program with caps of 8%-7%-6% described in ComEd’s direct testimony and the voluntary program with caps of 10% per year described in ComEd’s rebuttal testimony – are unlawful.

5. The Illinois Supreme Court in *Business and Professional People for the Public Interest, et al. v. Illinois Commerce Comm'n*, 146 Ill. 2d 175, 585 N.E.2d 1032 (1990) ("BPI II") held that a utility cannot recover in rates operating expenses incurred in prior periods because such a scheme would result in a mismatch of expenses and revenues in violation of the test year principle, which requires rates to be calculated using a single year of expenses and revenues. BPI II, 146 Ill.2d at 242. This principle applies regardless of the amount of expenses deferred.

6. The BPI II prohibition against deferred recovery of operating expenses applies in the instant case. The cost of electricity that a utility procures to serve customers is clearly an operating expense and, accordingly, under BPI II must be recovered in the accounting period in which the cost is incurred and the electricity delivered. BPI II unequivocally prohibits a utility from recording operating expenses in one year for recovery in a later year: "the test-year rules are intended to prevent a utility from mismatching revenue and operating expense data." BPI II, 146 Ill.2d at 242.

7. Test-year principles apply to proposals by "public utilities as defined in Section 3-105 of the Public Utilities Act (Act) [220 ILCS 5/3-105] . . . that are subject to requirements of Section 9-201 of the Act [220 ILCS 5/9-201] and 83 Ill. Adm. Code 285." 83 Ill. Admin. Code § 287.10. In this docket ComEd clearly meets these requirements:

- ComEd is a public utility as defined in Section 3-105 of the PUA.

- Section 9-201 of the Act applies whenever a public utility, such as ComEd, seeks to “change . . . any rate or other charge or classification or service...relating to or affecting any rate or other charge, classification or service.... 220 ILCS 5/9-201(a). In this case Section 9-201 clearly applies because ComEd seeks to change rates by reducing them in some years and increasing them in later years. Indeed, ComEd acknowledges that this section applies by expressly stating that the petition in this docket is filed “pursuant to Articles IX and XVI of the Illinois Public Utilities Act”. ComEd Petition, at 1.
- ComEd is subject to the requirements in Part 285 in this docket because, *inter alia*, ComEd’s cumulative filings over the previous 12 month period would increase ComEd’s revenues from service to residential customers by 1% or more. 83 Ill. Admin. Code §120(a).² In addition to the rate increase requested in this docket, ComEd’s request for an increase in delivery services rates was filed within the previous 12 month period and seeks a rate increase that would likely increase ComEd’s revenues from service to residential customers by at least 1%. Docket No. 05-0597, tariff filed on August 31, 2005, 200, case filed September 14, 2005,

The instant case is, therefore, a case in which test-year principles apply and, consequently, BPI II prohibits deferred recovery of operating expenses -- such as the expenses to procure electricity to serve customers.

8. ComEd cannot get around the BPI II holding by calling the deferred costs a “regulatory asset.” As noted above, the cost of procuring electricity is a current operating expense, not a capital expense to be amortized over several years.

² 83 Ill. Admin. Code § 120(a) states that Part 285 is “also applicable to increases of less than 1% if cumulative filings, including the current filing, over the previous 12 month period would increase revenues by 1% or more. If certain rates are not to be changed by the utility’s request, revenues resulting from the application of those rates are to be included in the comparison, provided the rates that are not changing are a component of the applicable service for which the utility is seeking a rate change.”

The Commission lacks authority to approve ComEd's illegal plan

9. The Commission is a creature of statute, and only possesses those powers expressly granted under the Public Utilities Act. *Lowden v. Illinois Commerce Comm'n*, 376 Ill. 225, 230, 33 N.E.2d 430, 433 (1941) (“the sole power of the Commission comes from the statute [Public Utilities Act]”). The Commission “has power and jurisdiction only to determine facts and make orders concerning the matters specified in the statute.” *Lowden*, 376 Ill. at 230, 33 N.E.2d at 433.

10. Because deferred recovery of operating expenses is not authorized by the Public Utilities Act, the Commission has no authority to approve ComEd's plan to defer recovery of the costs of procuring electricity to serve residential customers.

ComEd's petition should be dismissed

11. Because the Commission cannot, as a matter of law, approve ComEd's Plan, the Petition fails to make a request upon which relief can be granted. ComEd's Petition should, therefore, be dismissed.

WHEREFORE, for all of the reasons stated in this Supplemental Motion to Dismiss and in the People's original Motion to Dismiss, the People respectfully request that the Commission dismiss ComEd's Petition because it fails to make a request upon which relief can be granted.

Respectfully Submitted,
The People of the State of Illinois

By LISA MADIGAN, Attorney General

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August 10, 2006

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition for approval of tariffs	:	No. 060411
Implementing ComEd's proposed	:	
residential rate stabilization program :		

NOTICE OF FILING

PLEASE TAKE NOTICE that on August 10, 2006 the People of the State of Illinois filed a Motion to Dismiss in the above-captioned proceeding via e-Docket with the Chief Clerk of the Illinois Commerce Commission at 527 E. Capitol Avenue, Springfield, Illinois 62701.

_____/s/_____
Susan Hedman
Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I, Susan Hedman, hereby certify that the foregoing documents, together with this Notice of Filing and Certificate of Service, were sent to all parties of record listed on the attached service list by e-mail on August 10, 2006. Paper copies will be provided upon request.

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